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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,746

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Joshua Dick

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EXAMINER

KO, STEPHEN K

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,746	Applicant(s) DICK ET AL.	
	Examiner STEPHEN KO	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 13 is objected to because of the following informalities: "The grinding machine cleaner of claim 912" in L.1 of claim 13 is apparently should be written as "The grinding machine cleaner of claim 12". Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Brackett (US 4,852,813).

For claims 1 and 5-7, Brackett teaches a method for cleaning a grinding machine comprising the steps of apportioning a predetermined amount of cleaning material (claim 1); inserting the cleaning material into the grinding machine (claim 1); grinding the cleaning material using the grinder (col.3, L.38-39); and purging the ground cleaning material from the grinder without the use of liquid (claim 1). Note that the cleaning material possesses a color.

For claim 2, note that the cleaning material comprises sponge-like material (read as fiber, col.2, L.22).

For claim 8, note that the composition comprises skin (read as binding material, Fig.4, #222).

4. Claims 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Gabby et al (US 4,328,217).

Gabby et al teach a tablet comprising bran, which is preferred as wheat (col.2, L.63-67), and binding agent (col.2, L.21-25). Note that the tablet possesses a color. Since the product is identical to the claimed one, the product of Gabby can be purged without the use of liquid. Applicants' attention is drawn to the fact that claims 9-13 are drawn to the product and **not** to the method of using the product. Claims 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kramer (US 5,462,427).

Kramer teaches a tablet press comprising a mold having a first portion having a first predetermined size; and a second portion complementary to the first determined size and shape (Fig.1); and a pressing machine (Fig.1, #10) for pressing the first and second halves of the mold together at a predetermined force.

Since all the structures are found in the prior art, it is fully capable of performing the functions as recited in claims 16-17 and 20. The tablet press of Kramer is fully capable of pressing the first and second halves of the mold together at a predetermined force for combining food-safe materials into an object corresponding to the size and shape for most common type of product that the grinding machine is capable of grinding (tablet can be grinded by the grinding machine); and the pressed object made by the tablet press of Kramer is also fully capable of being purged through the grinding

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machine without the use of liquid. Applicants' attention is drawn to the fact that claims 15-20 are drawn to the apparatus **not** to the method of using the product.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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8. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takada et al (US 2002/0183261).

Takada et al teach a tablet comprising egg shell (read as inorganic food safe coarse materials, paragraph [0014]).

Takada et al remain silent about a binding material. However, examiner takes official notice that using a binding material to bind the compositions to form a tablet is well known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tablet of Takada et al by adding a binding material in order to bind the compositions to form a tablet as it is well known in the art. Since the product is identical to the claimed one, the product of Takada et al can be purged without the use of liquid. Applicants' attention is drawn to the fact that claims 9-13 are drawn to the product and **not** to the method of using the product.

Response to Arguments

9. Applicant's arguments with respect to claims 1-2 and 5-12 rejected under U.S.C. 102(e) over Hollander (US 2005/0026798); claims 1 and 5-7 rejected under U.S.C. 102(b) over Wise (US 6,554,007); and claims 2 and 8 rejected under U.S.C. 103(a) over Wise (US 6,554,007) in view of DeSenna et al (US 6,397,862) have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant's arguments filed 10/16/2009 with respected to claims 9-13 rejected under U.S.C. 102(b) over Gabby et al (US 4,328,217); claims 9 and 14 rejected under U.S.C. 103(a) over Takada et al (US 2002/0183261); and claims 15-20 rejected under

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U.S.C. 102(b) over Kramer (US 5,462,427) have been fully considered but they are not persuasive.

11. In response to applicants' argument that Gabby et al do not teach purging materials from a grinder without the use of liquid and Kramer does not teach the pressed object is capable of being purged through a grading machine without the use of liquid. The Examiner's position is that since the product is identical to the claimed one, the product of Gabby can be purged without the use of liquid. Applicants' attention is drawn to the fact that claims 9-13 are drawn to the product and **not** to the method of using the product. (See **In re Fitzgerald** (205 USPQ 594). (CAFC) or In re Spada 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990) and MPEP 2112.01 [R3]).

12. In response to applicants' argument that Kramer does not teach the pressing together of the material such that the pressed together materials correspond to the size and shape of the most common type of product that the grinding machine is capable of grinding, the Examiner's position is that since Kramer teaches a tablet press, the tablet made by the tablet press of Kramer is fully capable being grinded by the grinding machine (i.e. correspond to the size and shape of the most common type of product that the grinding machine is capable of grinding).

Election/Restrictions

13. Applicants' attention is drawn to the fact that this application contains at least the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. Group I, claim(s) 1-2, 5-13 and 14; and

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Group II, claim(s) 15-20. The restriction requirement is not made at this time, however it may be imposed later if the claims are amended to introduce additional limitations to each invention, which would require an additional search in each Group of claims.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHEN KO whose telephone number is (571)270-3726. The examiner can normally be reached on Monday to Thursday, 7:30am to 5:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Kornakov can be reached on 571-272-1303. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SK

/Michael Kornakov/
Supervisory Patent Examiner, Art Unit 1792